

STATEMENT OF THE CASE

Willie Herman, Jr. appeals his sentence following his guilty plea to Robbery, as a Class C felony. Herman presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 1, 2007, Herman argued with his coworker Andrew Dixon about whether their employer owed Herman money. Dixon told Herman to talk to the employer about the money. Herman left, but he returned a short time later and grabbed at Dixon's pants pocket, which ripped. Money that Dixon had in that pocket fell to the ground, and Herman took fifty dollars before he fled the scene.

The State charged Herman with robbery, as a Class C felony. On January 8, 2008, Herman pleaded guilty as charged. The plea agreement left sentencing open to the trial court's discretion, but capped the executed sentence at four years. The trial court entered judgment and sentenced Herman to the advisory sentence of four years. But the trial court agreed to "consider a modification back into home detention" after one year at the Department of Correction. Transcript at 7. This appeal ensued.

DISCUSSION AND DECISION

Under the advisory sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified in part on other grounds, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of

discretion. Id. An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” Id.

A trial court abuses its discretion if it (1) fails “to enter a sentencing statement at all[,]” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that “are improper as a matter of law.” Id. at 490-91. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion.¹ Id.

Herman first contends that “the trial court abused its discretion by failing to find that the logic and effect of the facts and circumstances set before the court would have been to have suspended all or most of any executed sentence above one year.”² Brief of Appellant at 11. The “facts and circumstances” to which Herman refers are certain mitigators that he contends are “significant and clearly supported by the record.” Id. In particular, Herman maintains that he did not use a weapon in committing the instant

¹ Herman cites to Indiana Appellate Rule 7(B), but he does not make any cogent argument regarding the nature of the offense or his character. Accordingly, we restrict our analysis to the alleged abuse of discretion.

² Herman also asserts, without supporting argument, that the trial court “did not adequately weigh” certain proffered mitigators. But as Anglemyer makes clear, that issue is no longer available on appeal.

offense, he “made no effort to conceal his identity,” he immediately accepted responsibility for his actions, and he showed remorse at sentencing. Id. But Herman does not support his argument on this issue with citations to the record. Merely stating that a mitigator is “significant and clearly supported by the record” is insufficient.

Regardless, Herman did not ask the trial court to consider two of the mitigators he proffers on appeal, namely, that no weapon was used and that he made no effort to conceal his identity. As such, those mitigators cannot support a revision of his sentence in this appeal. See Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005). Further, Herman’s characterization that he “immediately accepted responsibility” is contrary to the record. Brief of Appellant at 11. Herman did not admit to the robbery until five months after his arrest. And Herman’s expression of remorse at sentencing was negligible. In sum, Herman has not shown that the proffered mitigators warrant a reduced executed sentence.

Herman next contends that the trial court abused its discretion when it disregarded the recommendations of both the probation department and the prosecutor regarding sentencing. In particular, the probation department recommended that the trial court sentence Herman to one year executed and three years suspended, and the prosecutor recommended two years executed and two years suspended. But in sentencing Herman to four years executed, the trial court agreed to consider modification to home detention after one year in the Department of Correction. Given Herman’s criminal history and the fact that he was on “unsupervised probation” at the time of the instant offense, Herman

has not demonstrated that the trial court abused its discretion when it sentenced him.

Transcript at 5.

Affirmed.

DARDEN, J., and BROWN, J., concur.